



September 2010

# VALUATION OF RAILROAD RIGHT OF WAY

FEDERAL TRANSIT ADMINISTRATION  
Office of Program Management (TPM)

Washington, DC

September 2010

Prepared by

O. R. Colan Associates

# VALUATION OF RAILROAD RIGHT OF WAY

## TABLE OF CONTENTS

TOPIC	PAGE
TABLE OF CONTENTS.....	i
Recommendation Summary .....	1
Problem Statement.....	2
Typical Considerations In the Valuation of Railroad Corridors.....	2
Unused, Abandoned, or Bankrupt Railroad Right of Way .....	5
Historical Background.....	5
Miscellaneous Background Issues .....	5
Literature Search .....	7
Valuation Approaches .....	7
Analysis.....	9
Corridor Enhancement Factor Experiences.....	11
Certification of Property Necessary for the Project .....	12
Conclusion .....	12
Operating Railroad Right of Way .....	13
Background.....	13
Most Significant Physical Characteristics .....	14
Certification of Property Necessary for the Project .....	15
Motivating Factors.....	15
Conditions of the Transaction .....	16
Literature.....	17
Analysis.....	19
Conclusion .....	19
Consideration of Alternative right of way corridors.....	20
Surface Transportation Board (STB) Mediation of Right of Way Issues .....	21
Conclusion.....	23
Recommendations .....	23
Exhibit A: Appraisal Scope of Work Checklist .....	25

## RECOMMENDATIONS SUMMARY

The Federal Transit Administration (FTA) should evaluate the following when a grantee is considering the possibility of acquiring a property interest, or some similar type of agreement, for the use of or an accommodation within the right of way (ROW) owned by a railroad:

- Require a grantee to prepare a detailed valuation or appraisal scope of work (SOW) prior to making an assignment to an appraiser or other entity qualified to undertake a project, including references to specific requirements in the Recommendations section of this paper. FTA should review and concur in the appraisal SOW and the qualifications of the appraiser recommended by the grantee to undertake the assignment.
- If the railroad corridor is subject to the jurisdiction of Federal Surface Transportation Board (STB) requirements, a railroad specialist report must be procured by the grantee to determine the possible legal uses of or limitations on the existing right of way for transit applications. This report will be incorporated into the aforementioned appraisal SOW to facilitate determination of the highest and best use of the existing railroad corridor by the appraiser.
- Expand this study to include an analysis of transactions from the STB database involving inter-railroad mergers and acquisitions to compile meaningful private sector market data relative to the valuation of railroad real property assets. This research will address whether relevant open and arms length market sales of rail corridors or interests therein exist and/or will assist in determining the relevancy of the data to the railroad corridor valuation process by transit grantees.
- Consider further research regarding the acceptability, viability and any obstacles regarding the use of alternative existing linear ROW corridors that could accommodate a transit facility similar to those presently used for:
  - electrical power transmission,
  - pipeline transmission,
  - surface drainage, and
  - highways.
- Keep FTA grantees informed regarding the availability and implementation of nonbinding mediation that is available as the result of Section 401 of Title IV of the “Passenger Rail Investment and Improvement Act of 2008”. This Section requires “Commuter Rail Mediation” to be made available by the STB to assist a grantee to resolve a disagreement related to a proposed passenger commuter rail accommodation

in an existing railroad ROW corridor. This alternative dispute resolution initiative, may enhance the importance for transit grantees to procure objective, well documented railroad ROW valuation/appraisal reports, and should facilitate earlier reasonable agreements with railroad corridor owners.

(Please see individual detailed discussions and conclusions regarding these Recommendations in related sections of the report).

## **PROBLEM STATEMENT**

On occasion, FTA grantees are required to estimate a value of property that is now or previously has been utilized as an operating railroad right of way. This occurs when a project sponsor or grantee has proposed direct project Federal-aid reimbursement or where credits to the State or local matching share are requested in return for an in-kind contribution to the project. Ownership of land could involve varying property interests usually ranging from a lease, a perpetual or long-term easement, to fee simple title. The property may or may not be an element of an operating railroad ROW. Since an existing longitudinal ROW corridor is a unique property ownership situation, there is no single generally accepted method of valuing the property. In fact, the variables that must be considered are sufficiently unique as to allow for various approaches to value, depending upon the defined SOW for the appraisal problem.

Where real estate procurement or relocation assistance occurs on a federally funded project involving the acquisition or railroad property, the requirements of the following may be applicable:

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA),
- URA implementing regulations at Title 49 CFR Part 24,
- FTA Circular 5010.1D, effective November 1, 2008,
- FTA Guidance on the Application of 49 U.S.C. 5324© to Early Railroad Right-of-Way (ROW) Acquisition, dated April 2009, and
- other guidance, as applicable.

## **TYPICAL CONSIDERATIONS IN THE VALUATION OF RAILROAD CORRIDORS**

Section 3024 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: Legacy for Users (SAFETEA-LU) amended Federal transit law by adding a new provision at 49 U.S.C. 5324© that allows FTA, under certain conditions, to assist in the acquisition of pre-existing railroad

right-of-way (ROW) before the completion of an environmental review of any transportation project that will eventually be built on that ROW.

FTA issued its final implementation policy on this, which is available on its website at:

[http://www.fta.dot.gov/documents/Final\\_Guidance\\_with\\_Policy\\_Council\\_changes\\_and\\_useful\\_life-clean.pdf](http://www.fta.dot.gov/documents/Final_Guidance_with_Policy_Council_changes_and_useful_life-clean.pdf)

This policy is helpful in terms of navigating the planning and environmental clearances that are required to accomplish an early acquisition of a railroad corridor. The requirements related to real estate acquisition and relocation assistance as recited in the previous section are all applicable. Additionally, the following 11 considerations are also applicable to early acquisitions in the context of undertaking the required valuation of a railroad corridor.

The situations and circumstances of railroad corridor can vary greatly with regard to any number of basic elements. For example, the following illustrate the diversity of the appraisal problem:

- Was the original ROW acquired in fee, or by easement, or by some combination of both?
- A title search of the existing ownership documentation will be accomplished for the property to be acquired. This will determine the owner's interest in the property and if an appropriate interest therein can be conveyed for transit use. If there is a reversion clause in an earlier conveyance document, the title search will reveal the detailed circumstances related thereto.
- If there is a reversion clause, what uses could continue if the property was conveyed for transit use or other purposes, and what joint uses would be allowed?
- Are there existing utility or transmission lines located in the ROW? If so, what rights of continuance do these facilities have, and what impact do they have on value, generally and specifically for a transit application?
- Are there any railroad owned lands involved that are outside the normal operational railroad ROW that are used for railroad stations, maintenance facilities, industrial uses related to railroad freight/passenger operations, or other uses, and what property interest is owned in these areas?
- Are there any sites within the corridor to be appraised that are used, or may be used as sites for the erection of outdoor advertising signs and which may potentially generate revenue?
- Does the airspace above or subterranean interests below the surface have value in relation to the property interests required for the transit project, and does the railroad own these rights?
- Do existing railroad improvements have contributory value for transit use?

- Further, in cases where an existing railroad corridor is proposed to coexist with transit operations, it is not unusual that existing operating facilities may need adjustment to either preserve existing capacity and/or for safety reasons. The “cost to cure” expenses may be considered in the valuation process so long as the costs were reasonable, necessary and do not exceed the value of property damages that may otherwise occur.
- Has the grantee delineated the minimum real estate/ROW needed for the project and does the FTA agree with that determination, which has been documented with maps, legal descriptions, proposed design/construction limits, adjustments of existing rail facilities, etc., and will this information be provided to the real estate appraiser as an appraisal SOW requirement?
- Due diligence related to any property acquisition will require that an environmental site assessment of the property will be made and that information provided to the real estate appraiser as part of the appraisal SOW.

The traditional definition of market value may be of little use in these situations, as an operating or unused railroad corridor property is not typically sold in the open market. The value of the land can be estimated using a variety of assumptions and approaches, any of which may present serious challenges for the appraiser. Depending upon what specific assumptions are set out in the problem statement or appraisal SOW, a dramatic divergence in property values may result. Thus, the FTA provides appraisal guidelines specifically applicable to valuation of existing railroad ROW. The objective is to achieve consistent and reliable valuation outcomes in similar railroad ROW procurement situations.

When it is apparent the purchase of an existing railroad ROW corridor is a viable option, a railroad specialist’s report should be procured and can be specified as part of the appraisal SOW. This report as a minimum should address the following:

- STB regulation applicable to the railroad corridor regarding existing and future rail operation thereof,
- inventory and analysis of the existing physical conditions of the corridor, including all railroad improvements as to whether they have potential application for transit use, and
- analysis of the existing capacity of the corridor, current use thereof and capacity available for transit operations.

This specialists report should be obtained by or provided to the property appraiser for consideration in the analysis of the highest and best use (HBU) as required in the appraisal assignment.

The appraisal problem/assignment for valuing railroad ROW will likely be quite different, depending on whether the ROW is currently unused or abandoned, or whether it is operational.

This paper will look at these two situations from a point of view that makes the most sense as to valuation techniques employed. There seems to be more differences than similarities in transactions involving the valuation of railroad ROW. The process used and valuation techniques employed must be well understood, and sufficiently flexible to deal with the myriad of situations and variables than can occur.

## **UNUSED, ABANDONED, OR BANKRUPT RAILROAD RIGHT OF WAY**

### **Historical Background**

Over the past 20 to 30 years, numerous individual State court proceedings have been undertaken to establish the value of unused or abandoned railroad and utility corridors. After reviewing many of these court decisions, there is no evidence of any clearly defined trend in valuation that can be determined. Each of the individual cases is so unique as to render any similarity between cases as almost indefinable. Not only were the trial issues varied and unique, but the different court decisions place varying emphasis and degrees of weight on pertinent elements of the case under review.

By far, the most relevant court decision on valuation occurred in the mid 1970's in response to the issues raised and related to the Federal Regional Rail Reorganization Act of 1973. This Congressional Act transferred the property of several bankrupt Northeast railroads (including the Penn Central) to establish CONRAIL. A Special Court was convened to hear testimony, and determine property value of the bankrupt railroad ROW. This Special Court was headed by three prominent Federal court judges, who considered extensive testimony and handed down findings in this valuation effort. Many of these findings are considered landmark decisions, which are still valid today.

### **Miscellaneous Background Issues**

Some basic issues, which tend to cloud the wide variety of corridor valuation concerns include:

- reversion clauses,
- existing utility or transmission line corridors, within the railroad corridor,
- assemblage value or corridor enhancement factors (CEF),
- potential future corridor uses, and
- STB regulatory status and applicability.

Reversion clauses, depending upon the property interest that was originally acquired for the railroad ROW, easement acquisitions may contain a clause that upon termination of the railroad use, the underlying fee ownership would revert to the original owner. This could potentially have a major impact on overall value of the property when trying to estimate value



of the corridor no longer being actively used as a railroad. Although this is a sensitive issue, several courts have ruled that these reversion clauses are of limited applicability due to the inherent public interest in these corridors for either trails or open space. This public interest factor has effectively overridden reversion clause provisions.

Additionally, these longitudinal corridors continue to have the potential for unforeseen future use, which would render the dissemination of the corridor to be poor public policy. The bottom line is that reversion clauses are seldom enforceable.

Existing utility or transmission lines located within the railroad ROW may be a complicating issue, which could have an impact on land values. There is no limit to the manner in which these “corridors within the corridor” may be situated, or the varying rights to exist that may be in effect. A title search is required by the grantee of the property to be acquired and provided to the appraiser. The railroad may also share its records or maps documenting ownership interests and locations thereof. Based on this information, the appraiser would have to determine what utility or transmission rights are in existence, and determine what impacts these rights may have on value. This issue would have to be set out and addressed in the appraisal assignment SOW.

These so-called corridors within the railroad corridor ROW may have the effect of either increasing the value, as the result of the additional revenue generated or diminishing value as certain uses may be restricted due to the legal and physical constraints created by the presence of the utility facilities. This issue will necessarily be addressed in the appraisal SOW and the appraiser will be tasked with analyzing the valuation impact, if any.

Of all the complicating valuation issues, perhaps the most contentious is the application of assemblage value. The assemblage value is the incremental result of applying a “corridor multiplier” or “corridor enhancement factor.” This factor is applied to the base property value to take into account the extra cost, time and inconvenience of putting together a linear corridor, which is often expressed as a total property value exceeding the sum of its parts. Assemblage value is a well-known and accepted appraisal principle, which has validity in specific situations. When it comes to valuing a railroad corridor that is no longer being used by an operating railroad, assemblage value has been hotly debated in both academic literature and court findings. Specifics regarding this concept will be discussed in detail later in this paper.

In addition to the aforementioned preservation or banking of existing unused corridors for future use, (with interim use as trails for public use) there are other considerations for future uses. For example, what is the future use potential of the existing corridor for its continued use as an operating railroad. Given the status of railroad ROW in this category (Unused, Abandoned, or Bankrupt Railroad Right of Way), it would be doubtful that it would be subject

to STB regulation, which would simplify the appraisal highest and best use analysis. The lack of STB control would also simplify or remove obligations to continue rail service in the corridor.

If the line is rarely used or not operational, it may be possible that the transit grantee could petition the STB for involuntary abandonment of the line. Elimination of STB control through this process can greatly simplify the acquisition process and possibly lower costs. This may be an element to be considered in the context of the railroad specialist report previously discussed and mediation under the auspices of the STB as discussed later.

Is there existing capacity remaining for future operations and/or the addition of transit? Will modifications have to be made in existing operations or facilities to accommodate transit project? Research of this background information will have to be undertaken by either the grantee or the appraiser or possibly in a joint effort by both. This again would be addressed in the appraisal SOW, that the information either will be provided by the grantee or researched by the appraiser or by other railroad specialist's analysis reports in the valuation assignment.

### **Literature Search**

A literature search on the topic of valuation of unused, abandoned, or railroad ROW of bankrupt companies over the past twenty years, has not turned up much activity, and much that has been written is often contradictory. When trying to value unused railroad ROW, the traditional appraisal rules and approaches do not usually apply, as most authors describe the valuation problem as being monopolistic rather than open market. One would have to agree that open and "arms length" market sales may not exist, and that accepted appraisal valuation techniques might not be entirely applicable. One of the few items that most authors seem to agree on is that none of the traditional appraisal approaches (market, cost, and income) can be relied on in this valuation matter. That being said, it is easy to see how controversial valuation methodologies can become.

### **Valuation Approaches**

After careful consideration of the available literature and the findings of relevant court cases, there seems to be four basic approaches that may be applicable to valuing unused railroad right of way:

- liquidation value,
- across the fence value (ATF),
- ATF value plus assemblage value, and
- replacement cost.

These four approaches will usually result in widely varying end point estimates of value, and any of the four would be valid depending on the definition of value that is being estimated. In

virtually every given situation, the liquidation approach would yield the lowest value estimate; across the fence would yield the next highest; across the fence plus assemblage or corridor enhancement factor (CEF) would be higher still; and replacement cost would usually yield the highest value estimate.

- The Liquidation Value Approach assumes that the existing ROW is to be divided and disposed to whoever is willing to purchase the property for the highest price. In most instances, this would be the abutting owner, but not necessarily. One would have to consider that many abutting property owners would have no economic need for the land, and may actually view the land as a negative value considering the additional cost of maintenance and property taxes. It is quite likely that these narrow strips of railroad land would only have value to the abutter and only in those situations where it could be put to some incremental use. This would seemingly only occur where expansion of the abutting use was valuable, as in cases where additional parking, storage, or other expansion was needed or desired. Most of the time, the abutting uses have developed without any consideration of expansion onto the railroad ROW, and its new found availability does not have the potential to add much, if any, value. In utilizing this approach, the appraiser would have to analyze the corridor in relatively small segments to determine what the level of benefit might be for potential purchasers.
- The Across the Fence (ATF) Approach to corridor value would tend to be higher than the liquidation value. Under this approach, the appraiser would assume that the value of the unused railroad property would be similar to the value of the adjacent land located outside the corridor, regardless of the incremental benefit that the railroad land might have. This is a somewhat straightforward approach, and one that most appraisers would be comfortable in utilizing, as market data would generally be available. The level of reliability of values obtained would probably be the most supportable of the four approaches.

As an example, if the railroad ROW was situated adjacent to agricultural lands selling for a unit value of \$5,000/acre, it can be inferred that the railroad ROW also has a value of \$5,000/acre. If the corridor was passing through industrial lands selling for \$2.00/square foot, it can be inferred that the railroad ROW is also worth the same unit value. This valuation approach would ultimately be as complicated or as simple as the variety of lands adjacent to the railroad-owned property and the availability of market data to analyze.

- The Across the Fence (ATF) Plus Corridor Enhancement Factor (CEF) Approach is the next approach that is deemed to have legitimate standing in terms of likely increasing value. This approach would utilize the ATF approach, and then multiply that result by a developed factor to take into account the assemblage value of the corridor. This

approach assumes that the mere fact that all of the various parcels of land have been assembled into a unified linear purpose, adds some incremental measure of value due to the unique scarcity of the resource. There is little doubt that in the creation of the land corridor, a premium was paid in order to assemble the corridor. This premium is a combination of the significant added acquisition expenses, along with damages paid for remainder parcels reduced in value during the acquisition/assemblage.

- The approach that would usually yield the highest value estimate is known as the Replacement Cost Approach, and represents an estimate of what it would cost to assemble a new corridor. In this approach, one would have to consider all the costs associated with the purchase of a new corridor (this would include all direct costs for land, improvements, any property damages due to partial acquisitions, relocation assistance, all indirect costs (including overhead), and as well taking into account obstacles that may have to be overcome. These obstacles may include public opposition to the project or other specific changes causing socio-economic impact or disruption.

Of particular relevance are all of the existing environmental laws that are currently in place. Many of the existing longitudinal railroad corridors were purchased prior to the emergence of the environmental movement, and were able to incorporate properties which were of little value at the time, but which currently have some level of protected status (such as “wetlands”).

### **Analysis**

Of the four possible approaches to value listed above, only the “ATF “approach and the “ATF plus assemblage factor” or CEF approach appear to be reasonable for FTA valuation reimbursement of an unused or abandoned railroad ROW corridor. The guiding principle of the whole endeavor is to arrive at a fair and reasonable figure as to the value that represents just compensation for the required transit interest in the property. This means that the value estimate must not be skewed towards the primary interest of either the current owner of the property or a potential purchaser of the property.

Of the four basic approaches to value, the liquidation value represents the lowest value viewpoint that a purchaser would likely try to pursue, which would place the seller in the least advantageous position. Likewise, the replacement cost approach would place the purchaser in the least advantageous position. These two approaches, while possibly valid in some situations, do not adhere to what most would consider relatively fair treatment of both a purchaser and seller, thus representing market value. Existing literature also tends to eliminate both the liquidation and the replacement cost approaches to value as representing fair and open market value, taking into account the positions of both a potential buyer and seller.

The remaining question is whether the most appropriate approach to valuing the property in an existing, but unused railroad corridor, is by the ATF approach or by the ATF plus assemblage factor-CEF approach. In arriving at a conclusion, a search of current literature indicates that there is no clear-cut consensus between these positions. Strong and sensible arguments can be made on both sides of the issue. After considering all available sources of opinion, it appears that for FTA purposes, the most reasonable approach would be the straight ATF value, without including any assemblage factor-CEF. This conclusion is based on two individual items of analysis:

- Any assemblage factor-CEF would be speculative in nature, and subject to controversy. Although it is certainly fair to assume that an assemblage factor-CEF may be present, there is no consensus as to how such a factor would be determined. The fact that it would be difficult and controversial to establish an assemblage factor should not inherently dismiss such a factor as being relevant. However, the difficulty in arriving at such a factor does play into the development of valuation guidelines.
- The most relevant guidance in determining the applicability of an assemblage factor-CEF in valuation comes from the findings of the Federal Special Court valuation case in the creation of CONRAIL. After careful and detailed consideration, in 1977 the Special Court rejected the application of assemblage value as a general rule. The Special Court did say that assemblage value would only be appropriate when there was a nonspeculative likelihood of sales in the private marketplace for amounts higher than those that could be realized by disassembling the ROW and selling it as separate parcels. This means that in order for assemblage value to be considered as an element of value, an appraiser would have to demonstrate that the marketplace would assign an assemblage factor-CEF in each particular instance.

Note: This may be justification for the expansion research in this area as recommended in the beginning of this paper. Such research would hopefully document and provide insight into, an improved understanding of, how private inter-railroad sales consider corridor enhancement as an element of value. Such research may justify the application of an enhancement factor and the magnitude thereof, based on actual market transactions, or conversely it may determine that it does not exist or is not relevant in all situations. A model for the application or non-application of a corridor enhancement factor and its relative magnitude would be quite useful for railroad ROW valuation purposes.

By rejecting the automatic inclusion of an assemblage factor-CEF as an element of corridor value, the Special Court essentially followed basic appraisal philosophy that any aspect of value should be able to be demonstrated in the marketplace. The mere likelihood of an assemblage

factor-CEF is not sufficient to assume that it is present. If a CEF is to be utilized, there must be some legitimate market evidence of its presence.

### **Corridor Enhancement Factor Experiences**

One appraisal report done for an FTA grantee that had purchased an existing railroad ROW was examined in conjunction with this research report. This report and its value conclusion were recommended for approval by FTA. The appraisal analysis utilized and relied on the ATF plus Corridor Enhancement Factor approach described previously.

In this case, the appraiser undertook a nationwide search seeking sales of transportation corridors or operating rights, which had been acquired for transit development purposes. The sales that were utilized occurred during the period 1985 to 2002. The appraiser concluded that although the sales were not indicative of current pricing, the ratio of ATF value to the price paid remain valid despite the passage of time. The seven sales considered pertinent from the research, presented a factor range of 1.096 to 1.298 (Purchase Price/ATF Value=CEF), and the transaction average was calculated as 1.171, with the median as 1.158.

The appraiser selected and applied CEF of 1.150 as the corridor enhancement factor in this valuation (Example: ATF Value X 1.150 CEF = Estimated Value). The appraiser justified the application and the amount of the factor as reasonable, based on the fact that two of the transactions involved in this analysis involved the same railroad and transit grantee as in the transaction under appraisal.

It can be argued that the use of such data is flawed since these transactions are not necessarily market driven by parties that may not have property “highest and best use” (HBU) or the “greatest net return” as the prime motivation. Further, some of these transactions may have been under the threat of the power of eminent domain.

Conversely, if the railroad corridor was subject to STB regulation, the acquiring agency may not have had eminent domain authority in a given transaction. This condition may also influence the magnitude of the corridor enhancement factor. The CEF accuracy is dependent on numerous variables that must be considered, including, but not limited to the following:

- land uses involved,
- land use density,
- cost of adjusting facilities paid to owner,
- cost of adjusting facilities undertaken or paid for by project,
- accuracy of the ATF value, and
- STB regulation status.

All of the transactions in this analysis were negotiated, and were not necessarily under the threat of condemnation. The “purist” valuation advocate would argue that the real test here is what another competing railroad company would pay for such corridor in relation to the ATF value. Such data does not seem readily available and is the topic of one of the recommendations regarding further research included in this report.

### **Certification of Property Necessary for the Project**

An additional consideration that falls into the physical characteristics category is the presence of any “out parcels” of property that will also be conveyed in the transaction. Over time and for a variety of reasons, many railroads have acquired parcels of property outside of the normal operating ROW corridor. Depending on the nature and possible use of these parcels for transit purposes, the transaction price or FTA participation value could be altered. These out parcels may, or may not, be dedicated directly to railroad usage. Whether out parcels are needed and can be used for the transit project would require investigation and a determination by the grantee before the appraisal SOW is developed and the appraisal work is assigned.

This leads to another issue that must be addressed by the grantee prior to the appraisal assignment. The grantee must provide a certification of property necessary for the project. As discussed earlier, the property or ROW corridor being considered for purchase may involve interests in excess of that required for the project. FTA cannot consider such excess property for project reimbursement or credit. These excess property interests must be identified and excluded from the valuation by the grantee prior to obtaining the appraisal. Alternatively, the grantee may have the appraiser value the entire property and also value only the portion of the larger parcel that will be devoted to the actual transit project under development and approved by the FTA.

The required transit agency survey/analysis of the physical features or improvements of the existing railroad corridor and the determinations discussed here must be documented with maps, legal descriptions, and the grantee’s engineering design review and determination of necessity for the project. The transit agency survey/analysis must also address whether any of the existing railroad improvements or features of the existing corridor have any potential contributory value or negative value in relation to the HBU for transit use to be developed in the corridor. Again, this survey/analysis report necessarily must be provided to the appraiser and addressed in the appraisal SOW.

### **Conclusion**

When valuing abandoned or unused property within existing railroad corridors for FTA purposes, the proper methodology would be the basic across the fence approach. This value could be calculated in whatever increments are most reasonable depending upon the attributes

of the adjacent properties. If any additional value is to be added due to either an assemblage factor/CEF, or due to some subsurface, air rights or other physical attribute, such additional value must be demonstrated as recognizable in the marketplace.

Even where it is not possible to document corridor enhancement from research of market data, it still may exist in an abstract sense and may come into play with a high-level grantee decision to proceed or not with the project. Factors that can contribute to a corridor enhancement issue may include, but not be limited to the following:

- There may not be a cost effective alternative to the use of an existing railroad corridor.
- An environmentally satisfactory alternative that would be viable does not exist.
- The overall public interest served by the project may come into consideration.

Setting out the above factors is not a responsibility of the appraiser, review appraiser, or the valuation process. These factors may be appropriately considered in the context of an administrative settlement in accordance with Chapter IV of Circular 5010.1D and 49 CFR 24.102(i) of the URA Regulations.

The valuation process should only endeavor to document whether corridor enhancement exists based on market conditions, and then present this documented conclusion in the appraisal report. This concept should also be addressed in the appraisal SOW. Unfortunately, sometimes grantees expect appraisers to justify a value that really cannot be substantiated based on market actions or data. If one or more of the three elements listed above are involved, then grantee management should get involved and make/justify a decision that is in the overall public interest, relying on the appraised value as part of the basis for the decision.

## **OPERATING RAILROAD RIGHT OF WAY**

### **Background**

The variables to consider when estimating what a transit agency should pay or consider as value for a privately owned operating railroad ROW can be extensive and may be quite complicated. There have been numerous property sales and leases of railroad ROW to public transit agencies over the past twenty-five years; however, the circumstances of each transaction are seldom similar in critical aspects. As indicated previously, the relevant variables that are typically considered in these types of transactions fall into the general categories of:

- physical characteristics of and existing improvements within the corridor,
- motivations of the buyer and seller, and
- terms/conditions of the transaction.



## Most Significant Physical Characteristics

A summary of these characteristics are as follows:

- length of corridor,
- width of corridor,
- number and condition of tracks,
- availability and condition of signalization system,
- presence of any “out parcels” of property, and
- certification of only property necessary for the project.

The length of the corridor being acquired is one of the major considerations in arriving at a transaction value. What has to be understood is that for transit purposes, up to a point, there is usually a premium paid for the greater length of ROW available. As a general rule, the greater length of a transit corridor, the more and varied the services that can be accommodated.

The width of the corridor can also be a major consideration. The greater the width available, the greater the opportunity to provide more services or expand the infrastructure at a reasonable cost. Depending of the width of the corridor, it might be possible to add another track or construct structures that will enhance the facility without incurring substantial ROW costs. A greater width may also facilitate to possible accommodation of utilities or other compatible transmission facilities.

Narrower corridors can create issues for the grantee, sometimes involving the cost of acquiring additional ROW, or possible increased construction costs of the transit project to accommodate the transit facilities. Alternatively, if freight and transit are using the same corridor, significant construction costs may be involved in the relocation or adjustment of the existing freight or other rail facilities to accommodate the added transit operations if the ROW is narrow or constricted in certain areas.

The number and condition of the tracks in place may be a factor in arriving at an estimated transaction value. The corridor may contain a single track, dual track, or possibly several sets of tracks. Additionally, certain sections of the corridor may have had the track previously removed. If there are dual or more sets of tracks, as opposed to one set, the versatility of the corridor may be dramatically improved. Of course, not all track conditions may be equal, and the relative condition of the track could have a major impact on the transaction value.

Track that must be removed may only have a salvage value or a negative value depending of the net cost to remove it. Whether the existence of such tracks contributes value or is a detriment for transit HBU would require investigation and a determination by the grantee engineering staff. A survey/analysis should be done prior to the appraisal assignment and that information should be referenced and included in the appraisal SOW.

One of the most important attributes of a railroad corridor can be the availability and condition of a signalization system. According to the Charles River Associates paper, this price difference may be attributable to the importance of a having modern signalization system in place in a transit railroad corridor and the reduction in front end costs to implement passenger rail services. Whether the existence of the signalization systems contribute value or are a detriment for transit HBU would require investigation and a determination by the grantee engineering staff. This determination should be shared with the appraiser and addressed in the appraisal SOW.

### **Certification of Property Necessary for the Project**

The requirement for this certification also applies to this category of railroad property acquisition. Please see the earlier discussion of this topic in the section titled **Unused, Abandoned, or Bankrupt Railroad Right of Way** on page 5. As discussed previously, this certification and its supporting documentation will be provided to the appraiser and addressed in the appraisal SOW.

The inclusion of outparcels in the transaction with the railroad owner may occur for various reasons:

- Parcels are no longer needed,
- Disposition may result in an advantage to owner from STB regulation perspective
- Owner may want to generate revenue, and
- Transit May Need Outparcels for Stations, Parking or Storage/Maintenance Facilities

### **Motivating Factors**

Either the purchaser or the seller could be under outside pressure; political, economic, or otherwise, to complete the transaction. The economic circumstances of the railroad owner may be such that the corridor is no longer an integral factor in the company operations, and an infusion of cash may be of great importance. The general economy may have also had an impact on the corridor value, and the railroad could continue to operate by sharing the corridor with the transit agency, or could do so by shifting traffic to an alternate corridor. In some cases the railroad company may be operating at close to capacity on its line and it will dictate that such capacity must be maintained, which may indicate a higher value to a buyer and/or the incurrance of “costs to cure” to maintain the existing capacity on the rail line. Such costs may end up being paid by the transit project as a part of its overall project real estate acquisition cost.

In the case of a transit agency, probably the greatest motivating factor would be the need to create or provide upgraded service to accommodate the transportation needs of the public. This need may come in either the form of greater connectivity with existing services, or political and environmental needs to reduce vehicle congestion on the roadways. The availability of funding to the transit agency may also have a motivating influence.

Since railroad right of way purchases may not necessarily conform to typical arm's length market value conditions, market value may not always be accurately measured using any of the traditional valuation techniques or formats. Open market driven motivations may influence the ultimate price paid for a property, and are usually easier to identify and measure. Market influences on value can be quantified and thus offered as supporting documentation for a value conclusion.

In the typical transit acquisition of railroad right of way, significant political or non-market factors may be present. The extent of influence these factors generate can make for a very difficult analysis and appraisal problem. This situation can be justification for the use of an administrative settlement solution of the problem.

### **Conditions of the Transaction**

One of the two most important considerations of the transaction is whether the transit agency will share track usage with a freight railroad. Whenever there is a sharing of a resource such as this, both sides are limited in how they will adjust their operations in the future, as each has to take into account the needs of the other.

The other major variable condition is whether the transit agency will take complete ownership of the facility or merely acquire rights to exist within the ROW corridor. The financial implications and STB regulatory impact of such a decision are perhaps the greatest variable factors in the entire transaction.

An additional factor may, or may not, have some influence on the ultimate transaction price could be the value of property adjacent to the railroad right of way. It is possible that the value of the transaction could be influenced depending on whether the adjacent land was low value farmland as opposed to high value commercial/industrial land. While this factor would certainly be relevant when dealing with abandoned or unused ROW, just how important it may be when valuing operating railroad ROW is open to some conjecture.

The conditions of the transaction as outlined can create various scenarios, which must be clarified in the development of an appraisal assignment SOW. All of these circumstances represent challenging valuation issues for the appraiser. Listed below are some of the many possible scenarios:

- Permanent accommodation with exclusive use of ROW and rails for transit, utilizing new or existing rails, controls and signals, or
  - Railroad company may reserve the right to run only limited short haul delivery trains during certain hours to existing customers using new or existing track.
- Permanent accommodation (through lease, permanent easement, or fee simple title) within a railroad ROW corridor with continued use of the corridor for freight with the following variations:
  - Both freight and transit sharing the same track with arrangements required regarding dispatching, maintenance, and number and timing of train sets. Under this variation, the adjustment of freight facilities may be required.
  - Freight and transit sharing the same corridor, but freight and transit run on separate tracks and an adjustment of freight facilities may be required to accommodate transit.

## **Literature**

In reviewing existing literature on the subject, the most comprehensive study of this matter appears in a paper titled “Determinants of Price in Sales of Railroad Rights-of-Way to Public Transportation Agencies”, which was prepared by Charles River Associates, and presented in October 2004, at the Second Conference on Railroad Industry Structure, Competition, and Investment, at Northwestern University.

The authors analyze twenty-one separate transactions subsequent to 1980 from throughout the United States between public transit agencies and operating railroads, to attempt to come up with a valuation methodology that is realistic and relevant. (The authors indicate that thirty transactions had occurred, but give no explanation as to why only twenty-one were chosen for study review). They attempt to identify all of the relevant factors and characteristics of each of the sales, and determine areas of comparability, which could be isolated as indicators of value.

The Charles River Associates paper presented an evaluation of the components of the twenty-one sales, and through a regression analysis process, attempted to find out which components could be determined to be the most statistically significant aspects. Their study relied heavily on statistical significance to try to arrive at a valuation process for operating ROW. The sales that were evaluated turned out to be so unique and diverse, that the only truly significant component of value from their sample set was found to be linear miles of corridor in the transaction.

While width of the corridor was among the other findings and may have had some impact, it was not statistically relevant. Additionally, components such as the number of tracks within the

corridor, whether rail freight would share the corridor, and the presence of out-parcels, also did not present a significantly identifiable statistical impact.

Other than the actual length of the corridor being considered, the other two aspects of the transaction that had lesser, but yet a significant impact on value were whether the corridor;

- had an operational signalization structure, and
- was being purchased outright or the transit agency was just acquiring trackage rights.

The study found that the presence of an operating signalization structure was of significant value, and that a higher price was paid in the obtaining of trackage rights, rather than purchase of fee title. The assumption is that the higher costs of obtaining trackage rights reflect a premium paid to avoid risks and financial obligations that are inherent in track ownership.

Note: We offer additional possible explanations for the higher cost of acquiring trackage rights. This may result from:

- The condition may exist where the existing corridor is operating at or near its capacity, and the cost of accommodating transit is greater because of the competition for such capacity; and/or
- The need to adjust/expand existing facilities to maintain existing capacity, while accommodating the additional burden of transit will result in additional costs. The cost of any such adjustments that are necessary may be included in the transaction price paid, thus increasing it.

Both of these influences, if they exist, should be addressed by the appraiser in the appraisal analysis.

There is no doubt that in individual transaction circumstances, issues such as; corridor width, number of tracks (if any), out-parcels, sharing track or corridor with freight rail, and adjacent property values, could have an impact on purchase value. However, the twenty-one transactions that were reviewed by Charles River Associates did not reveal a statistically significant impact that could be applied on a general basis. Apparently, there would have to be a much larger number of transactions available for analysis before such a trend could be discernable. It is also somewhat likely that given the unique structure of these transactions, it may not be possible to arrive at any statistical significance to these particular elements.

Note: Remember the transactions analyzed in this study were all purchases by transit agencies, not open market transactions. It is believed that some of the attributes may not exhibit statistical significance as the result of two possible reasons that tend to inject non-economic considerations into this equation. These are:

- First, the transit agency is not entirely motivated by the economics of the situation, i.e., appraised value or rate of return on investment, but has other obligations such as provision of necessary services to the public, protecting the environment, etc.
- Second, the railroad company may have a very strong bargaining position since the alternatives to use of its existing ROW may be nonexistent, or at the very best, limited.

## **Analysis**

When attempting to isolate individual factors as contributing to value in a transaction, appraisers attempt to do what is known as a paired sales analysis. In this methodology, sales are obtained which are quite similar in almost all aspects except for one critical factor. By isolating this one factor out of the similar transactions, it is possible to arrive at a supportable and statistically significant value for that one factor. When applied to real estate transactions, this methodology can be applied to sales of similar properties within a specified time period, or to sales of the same property that occur within a short timeframe when one specific condition has been altered. Using this methodology, appraisers can arrive at a reliable indication of value for one contributing factor that can then be extrapolated for application in other sales comparison adjustments or analysis.

In doing an independent review of the twenty-one sales that were utilized in the Charles River Associates study, there is virtually no opportunity to perform a legitimate and supportable paired sales analysis. The factors in each of the sales are so unique and complicated or exhibit incomplete data, as to render any attempt to isolate individual factors very unreliable. Although it is possible that additional sales could provide more definitive results, the nature of these transactions is such that even with a larger sample of transactions, there still may not be enough data to obtain reliable and statistically significant individual value indicators.

## **Conclusion**

The various sales and leases of operating railroad ROW to public agencies that have occurred over the past twenty-five years are so unique and diverse, as to render difficulty in establishing a statistically significant economic relationship of various physical characteristics for valuation purposes. Notwithstanding this conclusion, certain factors in the transaction need to be surveyed, inventoried, and analyzed for their potential affect on or contribution to value, and include the following:

- longitudinal corridor length,
- corridor width,
- amount and condition of track and ballast within corridor,
- presence of ancillary buildings and structures,
- ownership of out-parcels of land and improvements,

- presence and status of signalization system,
- shared use between transit and freight service,
- purchase of corridor and track, or obtaining track usage rights, and
- presence of utility corridors and existing lines, as well as outdoor advertising sign sites.

In addition to the factors listed above, the various political or economic circumstances of the moment would likely have more of an impact than would normally be encountered in a typical real estate transaction. If a railroad were to be under any particular financial pressure, a potential transaction of this nature may put the railroad in the position of having only one good and legitimate opportunity to take advantage of the situation. A transit agency may have few options to meet its goals other than to enter into a deal or partnership with the railroad.

In attempting to arrive at a valuation methodology that is legitimate and can be supported, and an analysis of previous transactions does not lend itself to finding many statistically significant measures of comparison. While any of the factors listed previously may be important in the valuation process, the only one that can be counted on to be statistically significant is the length of the corridor being purchased. The two other major factors that can be demonstrated to affect value are:

- the status of signalization of the corridor and
- whether the transaction is an outright purchase or acquisition of track usage rights.

## **CONSIDERATION OF ALTERNATIVE RIGHT OF WAY CORRIDORS**

Although it may already be accomplished in most cases, it is worth reiterating the importance of this topic and its relevance in this paper. Existing rail corridors, whether in use or not, usually will represent the best alternative for accommodation of commuter rail passenger transportation, although there may be other possibilities.

In this regard, the acceptability and viability of any alternative existing linear ROW corridors that could accommodate such a transit facility should be considered, such as those presently used for:

- electric power transmission,
- pipeline transmission,
- surface drainage, and
- highways.

This consideration would usually occur very early in the transportation planning process for the area to be served by transit. Such alternatives should also be addressed and appropriately analyzed during the environmental documentation process. If obstacles to the consideration of

such alternatives exist, they should be further analyzed or researched to achieve a better understanding of what they are and why they are perceived to be a problem.

Any safety, legal or physical impediments that may exist to a transit accommodation, should be evaluated to ensure understanding of what they are and whether they preclude consideration of the alternative or can be mitigated in some way. It is our conclusion that this is an important determination that must be accomplished as expansion of commuter rail passenger transportation is considered. Additional research in this area should be undertaken as appropriate to accomplish a level of comfort in the utilization of such alternatives. This is critical, considering the limited resources available for building the nation's transportation infrastructure and to have a policy that best serves the overall public interest.

## **SURFACE TRANSPORTATION BOARD (STB) MEDIATION OF RIGHT OF WAY ISSUES**

In 2008, the U. S. Congress enacted and the President signed PUBLIC LAW 110–432—OCT. 16, 2008, DIVISION B—referred to as the “Passenger Rail Investment and Improvement Act of 2008”. Section 401 of Title IV of this statute references Commuter Rail Mediation. Although this provision may not directly pertain to the valuation of railroad corridors or trackage, it does recognize that it is in the public interest to accommodate commuter rail transportation within existing railroad corridors throughout the nation. It does provide the opportunity for the resolution of a disagreement concerning a proposed commuter rail passenger transportation accommodation that did not exist previously. It is believed this does highlight the necessity for an accurate and well-documented real estate valuation analysis of such a proposal.

This section requires that a process for nonbinding mediation be established by the STB. This requirement is as follows as set out in the statute:

### ***§ 28502. Surface Transportation Board mediation of trackage use requests***

*If, after a reasonable period of negotiation, a public transportation authority cannot reach agreement with a rail carrier to use trackage of, and have related services provided by, the rail carrier for purposes of commuter rail passenger transportation, the public transportation authority or the rail carrier may apply to the Board for nonbinding mediation. The Board shall conduct the nonbinding mediation in accordance with the mediation process of section 1109.4 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this section.*

### ***§ 28503. Surface Transportation Board mediation of rights-of-way use requests***

*If, after a reasonable period of negotiation, a public transportation authority cannot reach agreement with a rail carrier to acquire an interest in a railroad right-of-way for the construction and operation of a segregated fixed guideway facility to provide commuter rail passenger transportation, the public transportation*



*authority or the rail carrier may apply to the Board for nonbinding mediation. The Board shall conduct the nonbinding mediation in accordance with the mediation process of section 1109.4 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this section.*

The following section tasks the STB with the responsibility of issuing rules and regulations for the implementation of the above mediation provisions by October 16, 2009:

**§ 28505. Rules and regulations**

*Within 1 year after the date of enactment of this section, the Board shall issue such rules and regulations as may be necessary to carry out this chapter.*

Implementing regulations are in place regarding the mediation provision in the statute. The STB held a public hearing on this and other matters on February 11, 2009, and as of June 2010, no applications for mediation had been received regarding passenger rail accommodation by the STB. Based on the best information available, mediation can be requested under existing regulations as follows:

“TITLE 49—Transportation, Subtitle B—OTHER REGULATIONS RELATING TO TRANSPORTATION

CHAPTER X—SURFACE TRANSPORTATION BOARD, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER B—RULES OF PRACTICE

[PART 1106—PROCEDURES FOR SURFACE TRANSPORTATION BOARD CONSIDERATION OF SAFETY INTEGRATION PLANS IN CASES INVOLVING RAILROAD CONSOLIDATIONS, MERGERS, AND ACQUISITIONS OF CONTROL](#)

[PART 1109—USE OF ALTERNATIVE DISPUTE RESOLUTION IN BOARD PROCEEDINGS AND THOSE IN WHICH THE BOARD IS A PARTY](#)

§ 1109.1 Invoking ADR in Board proceedings.

Any proceeding may be held in abeyance for 90 days while administrative dispute resolution (ADR) procedures (such as arbitration and mediation) are pursued. (Additional 90 day periods can be requested.) The period while any proceeding is held in abeyance to facilitate ADR will not be counted towards the statutory deadlines. All parties are required to indicate their written consent for ADR treatment. Requests that a proceeding be held in abeyance while ADR procedures are pursued should be submitted to the Office of the Secretary. The Secretary shall promptly issue an order in response to such requests. Unless arbitration or some other binding process involving a neutral has been undertaken, any party believing that ADR procedures are not yielding the intended results shall inform the Secretary and all parties in writing, and normal agency procedures will be reactivated by the Secretary by notice served on all the parties.

## PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES

### § 1111.1 *Content of formal complaints; joinder.*

(a) *General.* A formal complaint must contain the correct, unabbreviated names and addresses of each complainant and defendant. It should set forth briefly and in plain language the facts upon which it is based. It should include specific reference to pertinent statutory provisions and Board regulations, and should advise the Board and the defendant fully in what respects these provisions or regulations have been violated. The complaint should contain a detailed statement of the relief requested. Relief in the alternative or of several different types may be demanded, but the issues raised in the formal complaint should not be broader than those to which complainant's evidence is to be directed at the hearing. In a complaint challenging the reasonableness of a rail rate, the complainant should indicate whether, in its view, the reasonableness of the rate should be examined using constrained market pricing or using the simplified standards adopted pursuant to 49 U.S.C. 10701(d)(3). If the complainant seeks to use the simplified standards, it should support this request by submitting, at a minimum, the following information:

### **CONCLUSION**

These provisions may enhance the relevance of developing an accurate and reasonable valuation analysis of the property interests necessary to accommodate commuter rail passenger transportation. An objective analysis would seem most helpful to an FTA grantee, if it would be necessary to apply for mediation under this provision of the law.

This alternative dispute resolution initiative may increase the importance for transit grantees to procure objective and well-documented railroad ROW valuation/appraisal reports. The availability of the mediation alternative should also facilitate earlier reasonable agreements with railroad corridor owners and facilitate accommodation of commuter rail passenger transportation.

### **RECOMMENDATIONS**

The FTA should evaluate the following when a grantee is considering the possibility of the acquisition of a property interest, or when considering entering into some kind of agreement for the use of ROW owned by a railroad:

- Require a grantee to prepare a detailed appraisal SOW prior to making an assignment to an appraiser or other entity qualified to undertake such a project, including reference to specific requirements for data collection and analysis thereof.
- An appraisal SOW should be required in all appraisal assignments, and specifically any assignment involving the valuation of an existing railroad ROW. Its development and application to railroad property should be specified in FTA Circular 5010.1D.
- The FTA should also specify that any appraisal SOW for railroad property would be submitted by the grantee for review and approval prior to making the assignment, because of the cost and complexity of such assignments.

- An Appraisal SOW Checklist or sample Appraisal SOW may be helpful in this regard. Please reference Exhibit A for a suggested draft checklist.
- Consider developing specific and appropriate criteria, process, and/or model to document whether an assemblage or corridor enhancement factor can be supported based on market data research.

If the railroad corridor is subject to the jurisdiction of Federal Surface Transportation Board (STB) requirements, a railroad specialist report must be procured by the grantee to determine the possible legal uses of or limitations on the existing right of way for transit applications. This report will be incorporated into the aforementioned appraisal SOW to facilitate determination of the highest and best use of the existing railroad corridor by the appraiser.

Consider expanding this study to include an analysis of transactions from the Federal STB database of transactions involving inter-railroad mergers and acquisitions, to compile meaningful private sector market data relative to the valuation of railroad real property assets. This would address whether relevant open and arm's length market sales of rail corridors exist or would assist in determining the relevancy of such data to the railroad corridor valuation process.

Consider further research regarding the acceptability, viability and any impediments of alternative existing linear ROW corridors that could accommodate a transit facility such as those presently used for:

- electric power transmission,
- pipeline transmission,
- surface drainage, and
- highways.

Keep FTA grantees informed regarding the availability and implementation of nonbinding mediation that is available under Section 401 of Title IV of the "Passenger Rail Investment and Improvement Act of 2008". This Section requires "Commuter Rail Mediation" to be made available by the STB. FTA should appropriately facilitate any grantee application for mediation by the STB involving any legitimate disagreement arising as the result of the proposed accommodation of commuter rail transportation within an existing rail corridor subject to STB regulation.

This alternative dispute resolution initiative may increase the importance for transit grantees to procure objective and well-documented railroad ROW valuation/appraisal reports. The availability of the mediation alternative should also facilitate earlier reasonable agreements

with railroad corridor owners and the accommodation of commuter rail passenger transportation.

## **RAILROAD VALUATION ASSIGNMENT**

### **EXHIBIT A: APPRAISAL SCOPE OF WORK CHECKLIST**

49 CFR Part 24, Section 24.103(a)(1) Appraisal requirements, specifies that an appraisal scope of work (SOW) will be developed to ensure appropriate definition of the appraisal problem and the required analysis to estimate a supported value considering all relevant appraisal standards and applicable Federal requirements.

FTA Circular 5010.1D also addresses real estate appraisal SOW requirements in Chapter IV and its Appendix C.

In the case of an appraisal assignment involving the valuation of an existing railroad ROW corridor, the following checklist of items as a minimum must be considered in addition to the above, in the development of an appraisal SOW. FTA concurrence in the appraisal SOW is encouraged as such valuation assignments are very complex and usually involve high values.

#### **Prepare Specialty Report on Legal Requirements Related to STB Regulation:**

- Engage analyst qualified to determine requirements and obligations of rail carriers subject to STB regulations.
- Provide report to real estate appraiser so any legal limitations regarding of property utilization can be analyzed, when determining highest and best use.

#### **Physical Characteristics-Describe and Relate To Contributory Value and Use for Transit:**

- Length of Corridor,
- Width of Corridor,
- Number and Condition of Track Sets,
- Signalization System and Condition,
- Presence of “Out Parcels” and Use for Transit,
- Certification of actual ROW Needed for Project,
- Present Status of the Existing Railroad ROW and Improvements and applicability of STB regulation thereof:
  - Operational-
    - Total capacity of the existing ROW/Facilities,
    - Railroad traffic density (from National Transportation Atlas Database),
    - Portion of capacity used currently,

- Expected future capacity needed,
- Alternative traffic re-routing possibilities,
- Describe improvements and condition thereof,
- Unused
  - Describe improvements and condition,
  - STB regulation if any,
- Abandoned
  - Describe improvements and condition,
  - STB regulation, if any.

**Agency Certification of Actual ROW Needed for Transit Project and FTA Approval:**

This will require a grantee engineering design and construction analysis of all permanent or temporary real property necessary to construct, operate, and maintain the project. Based on this certification of necessity the grantee will provide all appropriate plans and title information so appraiser knows what property is needed for the project that is to be appraised.

- Specify if “carve-out” valuation of only necessary ROW from “larger parcel” may be required to accommodate transit project.

**Potential Costs Associated with Adapting ROW Corridor for Transit Use:**

- Define additional ROW required to achieve desired functionality of transit project,
- Identify any necessary adjustment of existing and the cost facilities (using “cost to cure” or other analysis as appropriate) thereof,

(Note: Both of above require grantee engineering design and construction review and cost estimates for consideration by appraiser.)

**Motivation of Buyer and Seller:**

- Economic Circumstances of the property owner/Railroad Company,
- Capacity of existing ROW underutilized or fully utilized,
- Current business and cash flow situation, if known.
- Motivation of Transit Agency
  - What alternatives exist to the use of railroad ROW corridor,
  - What are environmental and cost Impacts of alternatives, and

- How is the public interest best served.

**Legal Considerations and Terms of Acquisition (to be provided by Grantee):**

- Plats and legal descriptions of existing property and proposed interests to be acquired,
- Title report regarding interests owned by railroad,
- Address compensability issues-consult legal counsel,
- Report of environmental site assessment regarding any contamination,
- Property Interests to be acquired:
  - Fee title,
  - Permanent or temporary easement,
  - Perpetual track and/or ROW sharing easement or license,
  - Combination of one or more of the above, and
  - Airspace or subterranean interests.